

Claimant suffered accidental injury on November 21, 1998, while hauling 4' x 8' sheets of 3/4-inch plywood for respondent. While moving a sheet of plywood, claimant twisted, but his foot became stuck in the mud and he suffered a sudden onset of pain in his back and left buttock. This injury occurred on November 21, 1998, a Saturday. Claimant worked the following Monday and Wednesday, and advised his job supervisor, Dick Passow, of his injury. He was sent home at that time.

On Friday, November 27, 1998, the day after Thanksgiving, when claimant was not regularly scheduled to work for respondent, claimant and another employee of respondent assisted Mr. Passow and his son in removing carpet from one of their rental units. Claimant worked for several hours, pulling carpet from the floor. The job was described as fairly strenuous, as the carpet was glued to the floor.

Claimant reported that the job of pulling carpet did not aggravate his back to any significant degree. However, claimant did not first seek medical treatment until November 30, 1998, at which time he went to Dr. Michael Brady, a chiropractor. The history of injury provided to Dr. Brady is consistent with claimant's description of the accident and aggravation at work.

Respondent contends that claimant's injury of November 21, 1998, was not a significant injury. Respondent further contends that the non-work-related carpet pulling activity on November 27, 1998, was the precipitating factor leading to claimant's ongoing problems and need for medical treatment. Claimant, however, testified that his back condition after November 21, 1998, continued to worsen for several days to the point where, on Wednesday, November 25, 1998, he was unable to continue working and, after talking to Mr. Passow, went home. Claimant described his symptoms on Wednesday, November 25, as including back pain, left buttock pain and radiculopathy into his left leg with some numbness and tingling.

Claimant was treated conservatively and ultimately underwent an MRI which indicated a herniated nucleus pulposus on the left side at L5-S1.

The only significant dispute in this matter is whether claimant's herniated disc resulted from the November 21, 1998, accident while carrying plywood for respondent or from the November 27, 1998, carpet job.

The Appeals Board notes that claimant did involve himself in some physical activities while pulling carpet which aggravated his back injury to a degree. However, claimant's testimony that his back had progressively worsened through Wednesday, November 25, 1998, to the point where he was experiencing significant radiculopathy is uncontradicted. The Appeals Board does not find the additional temporary aggravation experienced by claimant, while pulling carpet on November 27, to be the precipitating factor leading to claimant's herniated disc. The evidence instead supports a finding that claimant's condition stems from the November 21, 1998, injury and the worsening of claimant's back through November 25, 1998, while employed with respondent. The Appeals Board, therefore, finds that the Order of the Administrative Law Judge granting claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated June 17, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Gary R. Terrill, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director